

Message Text

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PAGE 01 BOGOTA 00414 141408Z

ACTION EB-07

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TO SECSTATE WASHDC PRIORITY 9312

C O N F I D E N T I A L BOGOTA 0414

E.O. 11652: GDS

TAGS: EAIR, ENRG, CO

SUBJECT: CIVAIR - GOC FUEL TAXES AND FUEL PRICE DIFFERENTIAL

REF: BOGOTA 0199, 76 BOGOTA 12762, 76 STATE 311499

1. EC/COM COUNSELOR MET WITH FOREIGN MINISTRY ACTING UNDER-SECRETARY FOR ECONOMIC AFFAIRS (TOBON) ON JANUARY 12 FOR A COMPLETE REVIEW OF THE PRICE DIFFERENTIAL AND FUEL TAX QUESTIONS. DURING HOUR-LONG MEETING, EMBOFF STRESSED A) NEED FOR PROMPT REFUND OF FUEL TAXES PAID THUS FAR BY BRANIFF. B) ADVISABILITY OF DECREE EXEMPTING BRANIFF FROM PAYMENT OF FUEL TAXES IN THE FUTURE AND C) SERIOUSNESS WITH WHICH US VIEWS CONTINUATION OF PRICE DIFFERENTIAL WHICH, UNDER US LAW, COULD REQUIRE USG TO WITHDRAW ACCESS OF COLOMBIAN AIRLINES TO US DOMESTIC FUEL POOL.

2. TOBON WAS IN COMPLETE AGREEMENT THAT FINAL RESOLUTION TO TAX PROBLEM WAS LONG OVERDUE. HE STATED THAT FOREIGN MINISTRY WOULD AGAIN INTERCEDE WITH DIRECTOR OF NATIONAL TAXES IN AN EFFORT TO SPEED UP THE PROCESS. AS FOR DECREE EXEMPTING BRANIFF FROM TAXES IN THE FUTURE, HE NOTED THAT FACT THAT COLOMBIA HAD NEVER RATIFIED AGREEMENT COULD COMPLICATE SOMEWHAT THE ISSUANCE OF SUCH A DECREE, BUT THAT HE WOULD INVESTIGATE THE MATTER WITH THE TAX OFFICE AND THE FOREIGN MINISTRY'S LEGAL DIVISION. EC/COM COUNSELOR
CONFIDENTIAL

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PAGE 02 BOGOTA 00414 141408Z

POINTED OUT THAT THE USG HAS CONSIDERED AND STILL CONSIDERS THE AGREEMENT TO BE IN FULL FORCE, TO WHICH TOBON REPLIED THAT, OBVIOUSLY, THE GOC CONSIDERS IT TO BE A VALID AGREEMENT ALSO.

3. WITH REGARD TO THE PRICE DIFFERENTIAL, TOBON NOTED THE OPINION EXPRESSED EARLIER BY THE FOREIGN MINISTRY

THAT FUEL PRICES WERE NOT SUBJECT TO THE BILATERAL. HE ADDED, HOWEVER, THAT THE QUESTION HAD BEEN REFERRED TO THE MINISTRY'S LEGAL DIVISION FOR STUDY AND THAT HE WOULD INFORM US OF THE RESULTS OF THE STUDY AS SOON AS THEY BECAME AVAILABLE. HE SAID THAT HE DID NOT KNOW IF THE LEGAL DIVISION HAD BEEN CONSULTED PREVIOUSLY ON THE MATTER.

4. IN CONVERSATION WITH VICE MINISTER OF MINES (ARAUJO) ON JANUARY 11, EC/COM CENSELOR RAISED THE PRICE DIFFERENTIAL PROBLEM. ARAUJO, WHO IS FAIRLY NEW TO THE JOB AND WAS UNINFORMED ON THE SUBJECT, EXPRESSED STRONG DOUBTS OVER THE POSSIBILITY OF ECOPETROL REDUCING THE PRICE OF FUEL TO BRANIFF. HE SAID THAT IF THE GOC INDEED CONSIDERS THE PRICE DIFFERENTIAL TO BE A SUBSIDY TO THE COLOMBIAN AIRLINES, IT WOULD BE HIGHLY UNLIKELY THAT THEY WOULD EXTEND THE SAME SUBSIDY TO BRANIFF, PARTICULARLY SINCE IT WOULD THEN ALSO HAVE TO BE GRANTED TO THE OTHER FOREIGN FLAG CARRIERS. A MORE LIKELY OUTCOME, ACCORDING TO ARAUJO, WOULD BE THE ELIMINATION OF THE DIFFERENTIAL FAVORING THE COLOMBIAN CARRIERS.

5. RETURNING TO THE TAX QUESTION, LOCAL BRANIFF REP HAS INFORMED US THAT COMPANY LAWYERS ON DECEMBER 30 COMPLETED THE PAPERWORK FOR THE SECOND TAX REFUND REQUEST COVERING THE PERIOD APRIL 1, 1972 TO OCTOBER 8, 1976. EARLIER REQUEST, PRESENTED IN 1975 AND COVERING THE PERIOD 1964 TO MARCH 1972 HAS BEEN APPROVED BUT IS STILL PENDING PAYMENT.

6. COMMENT. WE CONTINUE TO BELIEVE THAT IT IS JUST A CONFIDENTIAL

CONFIDENTIAL

PAGE 03 BOGOTA 00414 141408Z

MATTER OF TIME UNTIL BRANIFF RECEIVES ITS TAX REFUNDS, BUT THAT PROCESSING COULD BE SPEEDED IF SOME PRESSURE WERE BROUGHT TO BEAR ON AVIANCA. WE REPEAT, THEREFORE, OUR EARLIER SUGGESTION THAT DEPARTMENT CALL IN AVIANCA REPRESENTATIVE AND INFORM HIM THAT UNLESS TAX REFUNDS ARE RECEIVED BY A CERTAIN DATE (SAY, MARCH 31, 1977), USG WILL HAVE NO ALTERNATIVE BUT TO START IMPOSING TAXES ON FUEL PURCHASES BY AVIANCA. WE PRESUME THAT US TAXES COULD BE LEVIED IN SUCH A WAY AS TO PERMIT AVIANCA TO RECEIVE A REFUND AT AN APPROPRIATE TIME.

7. AS FOR PRICE DIFFERENTIAL, IT IS OUR OPINION THAT THERE IS LITTLE POSSIBILITY THAT GOC WILL REDUCE FUEL PRICES FOR BRANIFF. A MORE LIKELY OUTCOME IS THAT EVENTUALLY THE COLOMBIAN FLG CARRIERS WILL BE CHARGED MORE FOR THEIR FUEL. PRIOR TO DISCUSSING MATTER FURTHER WITH GOC, WE WOULD APPRECIATE DEPARTMENT'S REACTION TO COLOMBIAN PROPOSAL FOR CONSULTATIONS. SANCHEZ

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